

National Labor Relations Board



Weekly Summary of NLRB Cases

Division of Information

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CASES SUMMARIZED
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[Town & Country
Supermarkets, et al. and
Independent Employees Union](#)

Portage, Valparaiso,
and Merrillville, IN

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Strack and Van Til Supermarkets d/b/a Town & Country Supermarkets and Ultra Foods, et al. and Independent Employees Union of Northwest Indiana (25-CA-25780-3, et al., 25-CB-8069-2, et al.; 340 NLRB No. 172) Portage, Valparaiso, and Merrillville, IN Jan. 14, 2004. The administrative law judge found, and the Board agreed, that Independent Employees Union (IEU) violated Section 8(b)(1)(A) and 8(b)(2) of the Act by requesting that Strack and Van Til Supermarkets d/b/a Town & Country Supermarkets and Ultra Foods (Strack) suspend and discharge Annette Peters because of her dissident union activity and that Strack violated Section 8(a)(1) by: (1) prohibiting employees from picketing and handbilling on behalf of Food and Commercial Workers Locals 700 and 881 near the entrance and exit of its stores, threatening employees with arrest for doing so, and causing the arrest of one employee engaged in such activity; (2) engaging in surveillance of employees' union picketing and handbilling; and (3) threatening and interrogating employees with respect to their union activity. [\[HTML\]](#) [\[PDF\]](#)

Chairman Battista and Member Schaumber reversed the judge's finding that Strack violated Section 8(a)(3) and (1) by suspending and discharging Peters, concluding that the General Counsel has not met his initial burden of showing that Peters' protected dissident union activity on behalf of the UFCW was a motivating factor in her suspension and discharge. Assuming the General Counsel satisfied his initial burden under *Wright Line*, the majority held that Strack proved that it would have suspended and discharged Peters, pursuant to its handbook, for threatening a coworker, IEU President Rongers, even in the absence of her protected activity. Chairman Battista and Member Schaumber also reversed the judge's findings: (1) that Strack violated Section 8(a)(1) by photographing and videotaping employees engaged in union picketing and handbilling, and giving employees the impression of surveillance of such union activity; and (2) that C & T, the lessor of Strack's Portage store, violated Section 8(a)(1) by causing the removal of Strack's employees engaged in union picketing and handbilling.

Member Walsh disagreed with his colleagues' dismissal of these complaint allegations. With respect to Peters' discharge, he agreed with the majority that Strack suspended and discharged Peters because she stated to Rongers: "John, next time I see you I'm going to kick your ass." Member Walsh noted however "that Peters' statement was made in the course of her dissident union activity and was not so egregious as to remove her from the Act's protection." He also noted that his colleagues found Peters' discharge was lawful under a *Wright Line* analysis, but that it is well established that *Wright Line* is not applied where, as here, the respondent's action is motivated solely by the employee's protected union activity.

(Chairman Battista and Members Schaumber and Walsh participated.)

Charges filed by Food & Commercial Workers Locals 700 and 881; complaint alleged violation of Section 8(a)(1) and (3) and Section 8(b)(1)(A) and (2). Hearing at Valparaiso on various dates between Sept. 8 and Dec. 9, 1998. Adm. Law Judge Leonard M. Wagman issued his decision Feb. 22, 2000.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Chavey Electrical Contracting, Inc. (Electrical Workers [IBEW] Local 412) Farmington, NM January 7, 2004. 28-CA-18553; JD(SF)-02-04, Judge James M. Kennedy.

Garrett's Markets, Inc. d/b/a Garrett's IGA (Food & Commercial Workers Local 99) Tucson, AZ January 8, 2004. 28-CA-18727, 18887; JD(SF)-03-04, Judge Gregory Z. Meyerson.

Center for The Disabled (UNITE) Albany, NY January 13, 2004. 3-CA-23742, 23856, 3-RC-11255; JD-147-03, Judge Margaret M. Kern.

Consolidated Biscuit Co. (Bakery Workers) McComb, OH January 14, 2004. 8-CA-33402, et al.; JD-1-04, Judge Arthur J. Amchan.

American Incorporated (Electrical Workers [IBEW] Local 428) Visalia, CA January 14, 2004. 31-CA-26247; JD(SF)-06-04, Judge Lana H. Parke.

River Ranch Fresh Foods, LLC (Teamsters Local 890) Salinas, CA January 8, 2004. 32-CA-19938; JD(SF)-04-04, Judge John J. McCarrick.

Teamsters Local 399 (an Individual) Los Angeles, CA January 6, 2004. 31-CB-11179; JD(SF)-01-04, Judge Jay R. Pollack.

Day & Zimmermann, Inc. (Government Security Officers Local 254) Parsons, KS January 13, 2004. 17-CA-22229; JD(SF)-05-04, Judge Gregory Z. Meyerson.

NO ANSWER TO COMPLAINT

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the complaint.)

East Coast Services, Inc. (Electrical Workers [IBEW] Local 575) (9-CA-40399; 341 NLRB No. 2) Huntington, WV January 15, 2004. [\[HTML\]](#) [\[PDF\]](#)

TEST OF CERTIFICATION

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the ground that the Respondent has not raised any representation issue that is litigable in this unfair labor practice proceeding.)

Ivey Air, Inc. (Sheet Metal Workers Local 19) (4-CA-32387; 340 NLRB No. 173)
Levittown, PA January 12, 2004. [\[HTML\]](#) [\[PDF\]](#)
